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Supreme Court of the United States

October Term, 1966

No. 51

THE FIRST NATIONAL BANK OF LOGAN, Logan, Utah,
A National Banking Association,
Petitioner,

v.

WALKER BANK & TRUST CO., A Corporation,
Respondent,

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

No. 73

FIRST SECURITY BANK OF UTAH, N. A.,
Petitioner,

v.

COMMERCIAL SECURITY BANK,
Respondent,

No. 88

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
Petitioner,

v.

COMMERCIAL SECURITY BANK,
Respondent,

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF ON BEHALF OF THE COMMONWEALTH OF VIRGINIA AMICUS CURIAE

OPINIONS BELOW

The opinion of the court of appeals in No. 51 is reported at 352 F. (2d) 90, and the opinion of the district court

in that case at 234 F. Supp. 74. In Nos. 73 and 88 the court of appeals issued no opinion, other than its judgment, which is unreported. The opinion of the district court in these cases is reported at 236 F. Supp. 457.

PRELIMINARY STATEMENT

The Commonwealth of Virginia is filing this brief as amicus curiae in accordance with Rule 42 of the Revised Rules of the Supreme Court of the United States.

THE STATUTES INVOLVED

The federal statute involved is Section 36(c) of Title 12 of the United States Code, as amended, the pertinent provisions of which read as follows:

> "(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.* * *"

The state statute involved is Section 7-3-6 of the Utah Code Annotated, 1953, as amended, the pertinent provisions of which read as follows:

> "Except in cities of the first class, or within unincorporated areas of a county in which a city of the

first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank. No unit bank organized and operating at a point where there are other operating banks, state or national, shall be permitted to be acquired by another bank for the purpose of establishing a branch until such bank shall have been in operation as such for a period of five years."

THE INTEREST OF THE COMMONWEALTH OF VIRGINIA

In each of the cases before this Court, the issue is whether the Comptroller of the Currency can, under the provisions of Section 36(c), of Title 12, of the United States Code, authorize a national bank to establish a de novo branch in a locality where state law permits branching only by the "take over" of an existing bank. The petitioners contend that the Comptroller is not bound by such state statutory restriction and the respondents contend that he is.

These cases involve the question of branching within the same locality which is commonly called "inside branching", as opposed to statewide or "outside branching." The controlling subsection of Section 36(c) of Title 12 in "inside branching" cases is 36(c)(1), whereas 36(c)(2) relates to "outside branching." However, it is perfectly obvious from the arguments made by the petitioners in the lower courts, in their petitions for writs of certiorari, and in their briefs that they make no distinction between 36(c)(1) and 36(c)(2) insofar as the principle in the cases at bar is concerned. They take the position that the only restrictions of state law which are binding upon the Comptroller when he acts under either Section 36(c)(1) or 36(c)(2) are those that

relate to whether branches will be allowed at all and those that prescribe restrictions as to the geographical location of branches.[1] Although disagreeing heartily with the petitioners' interpretation of the statute, the Commonwealth agrees that there was no intent on the part of Congress in enacting the legislation which is now Section 36(c) to create different standards for branching under 36(c)(1) and 36(c)(2).

Proper interpretation of Section 36(c) is of vital concern to the Commonwealth of Virginia because of its statutes relating to branch banking, the pertinent portions of which are found in Section 6.1-39 (a) of the Code of Virginia of 1950, as amended, and read as follows:

> "§ 6.1-39. (a) No bank or trust company heretofore or hereafter incorporated under the laws of this State shall be authorized to engage in business in more than one place, except that the State Corporation Commission, when satisfied that public convenience and necessity will thereby be served, may authorize banks having paid-up and unimpaired capital and surplus of fifty thousand dollars or over to establish branches within the limits of the city, town or county in which the parent bank is located or to establish branches elsewhere by merger with banks located in any other county, city or town."

Although the merger restriction in the Virginia statute relates to "outside branches", the authorization of which is governed by 36(c)(2), if the principle advocated by petitioners in the cases now before this court is sustained, national banks would be permitted to establish de novo branches anywhere in Virginia at the discretion of the

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[1] *See Walker Bank & Trust Company* v. *Saxon*, 234 F. Supp. 74, 77 and page 16 Petitioner's brief in No. 73.

Comptroller of the Currency, whereas state banks could acquire branches outside of the locality of the parent bank only by way of the merger route. Such an interpretation of Section 36(c) would ignore completely the Congressional intent to maintain a state of competitive equality between state and national banks, and would put Virginia to the choice of changing its law so as to bring state banks back on a competitive basis with national banks or of leaving the law in its present form and watching the destruction of the dual banking system through conversion of state banks to national banks. It is highly unlikely that a state which has espoused the cause of the dual banking system for so many years would adopt the latter course. It is also not probable that the law would be changed to permit de novo branching on a statewide basis since as recently as 1962 the Virginia General Assembly, finding vigorous opposition to this system of branching, rejected it in favor of the more restricted method of statewide branching by merger only.

In an attempt to preserve the dual banking system, Virginia would most probably revert to branch banking laws similar to those in effect prior to 1962. These laws provided for de novo branches restricted to "the limits of the city, town or county in which the parent bank is located." Other branches could be acquired by merger or purchase, provided the consolidating banks were located in the same or adjoining counties or within a distance of twenty-five miles of each other and each had been in operation for more than five years. No provision was made for statewide branching.

The pre-1962 branching restrictions were clearly "location" restrictions which all parties to these cases appear to concede are binding upon the Comptroller when operating under Section 36(c). It would seem logical, therefore,

that Virginia should revert to this type of law if the petitioners here should prevail. This would not only result in a forced reversal of this Commonwealth's policy of statewide branching by merger, but would have seriously adverse consequences for national banks which the record shows have been the principal beneficiaries of the amendment permitting statewide branching by merger. Since the 1962 law became effective, there have been sixty-two mergers in which at least one national bank participated, whereas there have been eleven mergers involving state banks only.[2] With a very few exceptions these mergers would not have been possible under Virginia statutes prior to 1962.

The Commonwealth of Virginia is certain that the Congress in enacting Section 36(c) did not intend for the states to be forced to any such choice as is suggested here. In commenting upon the imbalance between state and national banks which would be created if the petitioners' position were upheld, the court said in *Commercial Security Bank* v. *Saxon,* 236 F. Supp. 457, 461:

> "* * * Of course, states could prevent this situation by liberalizing their branching laws, but the Court does not feel that this pressure on state legislatures was intended."

With this statement the Commonwealth of Virginia heartily agrees.

SUMMARY OF ARGUMENT

The Commonwealth of Virginia has directed its argument to Section 36(c)(2) as well as to 36(c)(1) because it believes that the proper interpretation of these subsections is the same insofar as the principle in issue is

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[2] Records of the Virginia Bankers Association.

concerned. Although the language in the two subsections differs to a degree, it shows a clear intent in each to permit national banks to branch only under circumstances that would permit state banks to branch.

Assuming for the sake of argument that the language of Section 36(c) is sufficiently ambiguous to require resort to various tests that are commonly used to assist in statutory interpretation, it is submitted that application of the three principal tests used for this purpose reveal:

1. A clear legislative intent to maintain a condition of competitive equality between state and national banks in the establishment of branches, by requiring both to adhere to the standards set forth in state statutes.

2. A preponderance of federal case law in diverse jurisdictions supporting the interpretation here contended for by the Commonwealth of Virginia.

3. Administrative interpretation in accord with that here contended for by Virginia, as reflected in statements made in recent years by the present Comptroller of the Currency, a petitioner in one of the cases now before this Court.

The argument of petitioners in their briefs to the effect that the interpretation of Section 36(c) championed by Virginia and the respondents here would result in anti-competitive conditions contrary to federal policy is totally without merit. It is impossible to find logic in a contention that a law which was designed to assure competitive equality between state and national banks will promote monopoly unless it is interpreted to mean that the national banks shall have a competitive advantage over state banks. Furthermore, even if such an argument were worthy of attention, it is submitted that a system which permits statewide de

novo branching is more likely to promote monopoly than is one which permits branches to be established by merger only.

ARGUMENT

I

Introduction

The position of the Commonwealth of Virginia with respect to the issue raised in the cases at bar, is that a proper interpretation of Section 36(c) makes all branch banking restrictions contained in state statutes applicable to national banks seeking branches thereunder if the restrictions are of such a nature that failure to apply them to state and national banks equally would create a competitive disparity between the two. This position is sustained by the legislative history of Section 36(c), by numerous decisions of the federal courts construing this statute and by admissions of the Comptroller of the Currency who is one of the petitioners here.

II

The Legislative History of Section 36(c) Shows a Clear Intent to Incorporate Therein Such Conditions of State Statutes As Will Maintain Competitive Equality Between State and National Banks.

The legislative history of Section 36(c) has been thoroughly reviewed in court decisions and in the petitions and briefs of the parties. *Walker Bank & Trust Co.* v. *Saxon,* 352 F. (2d) 90; *Commercial Security Bank* v. *Saxon,* 236 F. Supp. 457; *National Bank of Detroit* v. *Wayne Oakland Bank,* 252 F. (2d) 537.[3] Consequently, no lengthy review of the history will be repeated here, but it would seem

[3] See also petitioners' briefs in Nos. 73 and 88.

appropriate to sketch in some of the more important events and statements surrounding the enactment of Section 36(c) which point up the true legislative intent to preserve competitive equality between state and national banks.

No controversy exists as to the reason for introduction of the legislation which became known as the McFadden Act, the provisions of which are now incorporated in Section 36(c)(1). It is universally agreed that the purpose of this legislation was to establish a condition of competitive equality between the national banks, which were not permitted to branch at all, and state banks, which were permitted to branch where state law permitted branching. In order to achieve this equality Congress granted national banks the right to establish "inside branches" where the state law permitted "inside branching" to state banks. At the same time the state member banks of the Federal Reserve System were restricted to "inside branching." The background of the McFadden Act, the debates in Congress that preceded its passage, and the report of the Senate Banking and Currency Committee made it abundantly clear that the sole purpose of the Act was to put national banks in *exactly* the same position as state banks insofar as "inside branching" was concerned.

A serious challenge to the principle of equality between national and state banks arose in 1932 as a result of bank failures during the depression. Senator Carter Glass and a colleague who thought that a liberalization of branch banking laws was the best answer to the bank failure problem introduced the Glass-Stegall Bill, the provisions of which would have permitted national banks to establish statewide branches in all states irrespective of state branching laws. The bill was vigorously opposed by advocates of the dual banking system who predicted the destruction of the system

if national banks were given the competitive advantage over state banks proposed in the bill. After extended and bitter debate and the adoption of an amendment offered by Senator Bratton of New Mexico to restore the principle of competitive equality, the bill emerged as the Banking Act of 1933 which has been codified as Section 36(c) of Title 12 U.S.C. Thus the attempt by Senator Glass and his followers to disregard state laws as the measuring stick of branch banking was beaten back. That Senator Glass himself recognized the intent of Congress to incorporate conditions of state law into what is now Section 36(c) is evident from a speech made by him on the Senate floor which was reported at 77 Congressional Record 3726 1933. Senator Glass said:

> "There was another more or less important provision of the bill passed last spring which is retained in text in this bill, relating to branch banking. It will be recalled that, as reported from your Banking and Currency Committee, the provision authorized national banks to engage in branch banking in the respective States, regardless of State law. The Senate so amended that provision as to authorize national banks to engage in branch banking in those States which by law permit branch banking to State Banks. It went even further under the amendment of the distinguished Senator from New Mexico, and required that the establishment of branch banks by national banks in States which by law permit branch banking should be under the regulations required by State law of State banks."

In the course of the same statement he said:

> "* * * We here legislate for the national banking system; and why anybody should object to putting national banks on a plane of competitive equality with State

banks in the respective States we have been unable to understand.* * *"

This analysis of the bill by its author leaves no room for doubt as to his interpretation of its meaning. He states in unambiguous language the effect of two amendments to the bill which in its orignal form ignored state law entirely. The first amendment, he said, provided that national banks could engage in branch banking only in states whose laws permitted state banks to branch. However, he said, the second amendment (the Bratton amendment) provided that even in those states which permit some form of branch banking, a national bank seeking to establish a branch "should be under the regulations required by State law of State banks."

The quoted statement by Senator Glass, the chief proponent of the bill, renders completely untenable the position of the petitioners here that the language of Section 36(c) merely means that if a state law permits branch banking in any form, national banks can establish de novo branches therein in complete disregard of restrictions of the state law such as a restriction confining branches to those acquired by merger. How can anyone seriously contend that the establishment of branches by national banks is "under the regulations required by State law of State banks" or that national and state banks are "on a plane of competitive equality" if national banks can establish de novo branches in a state whose laws restrict state bank branches to those acquired by merger.

Two other excerpts from the Congressional debate on the Banking Act of 1933 are worthy of mention as illustrating legislative intent. In 76 Congressional Record 2262-2263 (1933) Senator Vandenberg made the following statement:

> "Mr. President, the Senate has now amended the branch-banking section of the pending bill to provide that the branch-banking privilege so far as national banks are concerned shall follow the status established by State law in respect to the State privilege. I have a schedule which briefly summarizes the State status in respect to this problem in the 48 States; and inasmuch as this phase of the matter is of great importance in the interpretation of the proposed law, I ask that it may be printed in the Record."

The matter inserted in the Record was a schedule showing the names of those states which had no legislation on branch banking, those which prohibited any form of branch banking, those which permitted state wide branch banking, and those which permitted branch banking under certain conditions, including the requirement of merger.

The only logical explanation of Senator Vandenberg's statement and the introduction of the schedule is that he recognized that the bill under consideration required that national banks be subjected to specific branch banking restrictions of state law.

In the House of Representatives, Congressman Robert Low Bacon in explaining the branching provisions of the bill stated that under its provisions national banks might "establish branches at any point within the state in which they are located, provided that this is permitted by the laws of the state and subject to them." He pointed out as examples of the state laws to which the national banks would be "subject" sixteen states in which branch banking was permitted only under certain restrictions (77 Congressional Record 3949).

Every aspect of the history of Section 36(c) shows that the advocates of the principle of competitive equality between state and national banks prevailed in the final version

of the legislation. To adopt the theory of the petitioners in the cases at bar would be to deny what the Congress obviously intended. Compliance with this legislative intent permits only one practical application of Section 36(c) in branching situations. In determining whether a national bank can establish a branch in a state, the Comptroller must determine whether, under the circumstances then existing, state law would permit a state bank to establish a branch. *Commercial Security Bank* v. *Saxon* 236 F. Supp. 457, 459; *National Bank of Detroit* v. *Wayne Oakland Bank* 252 F. (2d) 537, 540. If the answer is yes, the national bank branch is permissible. If no, it is not. This interpretation affords exactly the same treatment to national and state banks. The petitioners' interpretation gives national banks a decided advantage over state banks.

III

Decisions of the Lower Federal Courts Support the Principle of Competitive Equality and the Necessity of Incorporating Conditions of State Statutes to Achieve It.

The issue involved in the cases now before this court has been the subject of a great deal of litigation in recent years. Although some of the cases have involved an interpretation of Section 36(c)(1) and some an interpretation of Section 36(c)(2), it is submitted that both classes of cases are pertinent here for the reason previously stated that the principle involved in the cases here on appeal is the same whether the branching being considered is "inside branching" under 36(c)(1) or "outside branching" under 36(c)(2). The significant thing about the cases is the fact that they all recognize the principle of competitive equality as the basis of Section 36(c) and the necessity of looking to state law to attain this objective.

After reviewing the legislative history of Section 36(c) the United States Court of Appeals, Tenth Circuit, found in the case of *Walker Bank & Trust Company* v. *Saxon* 352 F. (2d) 90, 94, intent on the part of Congress "to create and maintain a competitive equality between state and national banks" and a requirement on the part of the Comptroller when exercising his branch banking authority under Section 36(c) to "look at all the State law on branch banking not just a part of it." This court rejected the holding of the district court to the effect that the restriction of the Utah law requiring banks to "take over" another bank in order to create a branch was not made applicable to national banks by the provisions of 36(c)(1). In *Commercial Security Bank* v. *Saxon,* 236 F. Supp. 457, the United States District Court, District of Columbia, in deciding precisely the same question as the one in issue in the *Walker* case, *supra,* reached the same conclusion, for the same reasons, as the Tenth Circuit Court of Appeals did in the *Walker* case. It said that Congress had recognized "competitive equality in at least the most important areas of competition between the two systems" is essential to the survival of the dual banking system. In enjoining the Comptroller from authorizing the establishment of a de novo branch by a national bank without "taking over" an existing bank the court said it felt compelled "to hold that the exact standards of the Utah branching law must be applied" to the national bank applicant.

In *Hoosier State Bank of Indiana* v. *Saxon,* 248 F. Supp. 233, the court discussed both 36(c)(1) and 36(c)(2) and held that the Congressional purpose in passing both of them was "to foster equality in vital areas of competition between the two systems." It said that to permit a national bank to ignore an Indiana statutory restriction relating to branching

would render meaningless the provision of Section 36(c)(1) permitting national banks to branch in situations where such branching is "expressly authorized" to state banks by state law. Under the circumstances of this case, the court said, the "in branching" involved is "expressly prohibited" rather than "expressly authorized" by state law as required by Section 36(c).

In *National Bank of Detroit* v. *Wayne Oakland Bank,* 252 F. (2d) 537, and in *Commercial State Bank of Roseville* v. *Gidney,* 174 F. Supp. 770, the courts, dealing in each case with the right of the Comptroller to ignore conditions of the Michigan law in authorizing national bank branches, held that Congress intended in such cases for state law to be the "measuring stick" for the establishment of branches by national banks. The practical effect of this, the court said in the *National Bank of Detroit* case, *supra,* is "that a national bank should have no greater rights than it would if it were a state bank * * *".

In *State of South Dakota* v. *National Bank of South Dakota,* 219 F. Supp. 842, *affd.* 335 F. (2d) 444, *cert. denied* 379 U. S. 970, the court in discussing Section 36(c) in its entirety, stated that its purpose was "to insure equality between state and national banks regarding the establishment of branches" and that under it "* * * state law is adopted by the federal government and made the measuring stick by which it is determined whether national banks may establish branches." The United States Court of Appeals for the Fifth Circuit used similar language in *Jackson* v. *First National Bank of Valdosta,* 349 F. (2d) 71, 74.

Petitioners cannot, nor have they sought to, contend that the holding of the above cases does not represent the great weight of authority as to the issue before this court.

IV

Administrative Interpretation of Section 36(c) in Virginia Shows Comptroller's Recognition of Merger Restriction.

Petitioners have taken the position that administrative interpretation of Section 36(c) is entitled to great weight and have cited cases in support of this proposition but have neglected to show any history of administrative interpretation of Section 36(c) other than the interpretation of the Comptroller of the Currency in the instant cases.

Assuming *arguendo* that administrative interpretation is necessary here, it is submitted that the Comptroller's interpretation in cases involving the Virginia branch banking statutes, as amended in 1962, have shown a clear recognition that he considered a restriction limiting "outside branches" to those acquired by merger as applicable to national bank branches.

In a decision handed down on June 28, 1962, denying the application for a merger of The Colonial-American National Bank of Roanoke and The First National Exchange Bank, both of Roanoke, Virginia, Mr. Saxon said:

> "Among the facts that must be considered in passing on this application is the new Virginia branch banking law which takes effect June 29, 1962, and the holding company movement which is now taking place in that state. This statute, in effect, authorizes statewide branch banking through mergers. It is not possible at this time to appraise realistically the banking structure which will evolve under this new law and the holding company movement, although pervasive changes may be anticipated."
>
> "* * *"
>
> "These banks represent two of the principal sources —being the first and second banks in size—from which initiative could be expected to flow in meeting the

future requirements of the area for larger-scale financing to facilitate economic growth. It is in the public interest to preserve the independence of these institutions to serve as experienced and effectively operating nuclei about which still larger institutions may be formed. The new Virginia statute permitting statewide branching through mergers, which becomes operative on June 29, 1962, affords a vehicle through which this alternative course may be pursued. While it cannot be said that the new authority to branch through mergers will serve all of the requirements of a balanced banking structure, as effectively as these requirements could be achieved through de novo branching, it does offer added opportunities to enlarge the size of banks, and to bring more effective employment of under-utilized resources, in response to the needs which are relevant in the present case."

In a statement dated August 31, 1962, relating to his approval of the merger of the First & Merchants National Bank of Richmond with the Augusta National Bank of Staunton, the Comptroller said:

"The resulting bank, making proper use of the new Virginia law permitting statewide branching through the technique of merger, will bring its resources and services directly to the Augusta County area with a demonstrable benefit to the convenience and needs of the community."

Again, when he approved the merger of the First & Merchants National Bank of Richmond with the Peoples National Bank & Trust Company of Lynchburg, Mr. Saxon pointed out that the Richmond bank:

"has two branches in Staunton and five branches in Newport News, all acquired this year through merger

and operating as branches under an enlightened law passed by the Commonwealth of Virginia early this year."

Surely, if consistently with earlier pronouncements is one of the tests to be applied in judging the weight of administrative interpretations as this Court has held,[4] the Comptroller's latest interpretation is entitled to little consideration. It is no answer to his conflicting interpretations that he was dealing in the Virginia decisons with Section 36(c)(2), since as previously mentioned[5] he has stated that the only difference between 36(c)(1) and 36(c)(2) is the "location" condition of 36(c)(2).

V

State Statutory Provisions Limiting Branch Banks to Those Acquired by "Take Over" or Merger Are Not Opposed to Federal Policy Favoring Competition.

Petitioners seek to support their interpretation of Section 36(c) by arguing that state statutory restrictions, such as the "take over" requirement of the Utah law, encourage monopoly and hence are opposed to federal policy. It is their position that national banks must be allowed to branch de novo in order to bring new banking blood into a community and that this is what Congress intended.

This contention of petitioners, being based as it is upon giving national banks a decided competitive advantage over state banks, does not reflect federal policy. As heretofore pointed out, Congress was given the opportunity in 1933 to pass legislation which would permit national banks to establish statewide de novo branches irrespective of state

[4] See *Skidmore* v. *Swift & Company*, 323 U. S. 134, 139, 140; 89 L ed 124, 129.

[5] See page 4, footnote 1.

laws. Yet Congress rejected the proposal on the ground that neither banking system should have an advantage over the other and that state law should be the standard by which equality would be maintained. It is obvious that Congress thought in 1933 that Section 36(c) was not anti-competitive in effect. Since the national banking authorities during the years since 1933 have recognized state branching standards as applicable to national banks and Congress has not seen fit to make any amendment to the pertinent language of Section 36(c) during that time, it follows that Congress has not found the law objectionable as tending to restrain competition.

Quite apart from the fact that no federal policy is violated by the statutory construction which the Commonwealth of Virginia here supports, petitioners cannot substantiate their claim that de novo branching provides a healthy competition between banks whereas branching by merger tends to create monopoly. The facts prove otherwise.

Virginia has sought through the years to preserve the principle of free competition between banks by enacting laws that would permit the survival of the independent unit bank. Contrary to the view of petitioners, Virginia has felt that unrestricted branch banking laws would facilitate the destruction of competition and the promotion of monopoly. With this in mind, during the years 1948-1962, Virginia restricted de novo branching to the limits of the city, town, or county in which the parent bank was located and restricted branching by merger or absorption to banks within the same or adjoining counties or within twenty-five miles of each other.

In 1962 when an expanded economy caused the General Assembly of Virginia to take note of the need for banks with

greater resources, it still was unwilling to permit statewide de novo branching but adopted the more moderate course of permitting statewide branch banking only through merger with another bank. Its purpose was to give the smaller independent bank a choice as to whether it wished to remain independent if it were approached by a larger bank wishing to merge. Where de novo branching is permitted, the larger bank is in a position to force the smaller to merge against the will of the latter by threatening it with extinction through the establishment of a de novo branch in the same locality. On the other hand, where the larger bank can acquire branches only by merger, the smaller bank can exercise free choice as to its destiny.

It is true, as petitioners contend, that branching by merger merely substitutes one bank for another, but the same result may follow from de novo branching with more disastrous consequences. Despite the fact that the de novo system advocated by petitioners may inject new banking blood into a community, it may result in the annihilation of another bank there and the dislocation of all its personnel. It is submitted that this is not the type of competition that Congress advocates.

The fallacy of petitioners' argument that de novo branching promotes competition and that more restricted types of branching have the opposite effect is illustrated by a comparison of the banking systems in Virginia and its neighboring state of North Carolina. In North Carolina where the banking industry grew up under a system of statewide de novo branching, there were as of August 31, 1966, only 142 unit banks in contrast to 253 in Virginia. In North Carolina only 1 new unit bank has been opened in the past six years, whereas 24 new unit banks have been opened in Virginia during the four years since the passage of legislation per-

mitting statewide branching by merger.[6] Under its de novo branching system, banking in North Carolina has been dominated for years by a relatively few giants in the industry. In Virginia the competition has been much more widespread by virtue of a policy that has permitted the survival of the independent bank.

It is submitted that petitioners have not, and cannot, prove their claim that unrestricted branch banking laws promote the kind of competition that is compatible with national policy whereas the opposite is true of laws which restrict the methods of branching.

CONCLUSION

The judgments of the United States Court of Appeals for the Tenth Circuit and of United States Court of Appeals for the District of Columbia Circuit should be sustained.

Respectfully submitted,

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[6] Records of Virginia Bankers Association and North Carolina Bankers Association.

CERTIFICATE OF SERVICE

I, Kenneth C. Patty, an Assistant Attorney General of Virginia, a member of the Bar of the Supreme Court of the United States and one of the counsel for the Commonwealth of Virginia, as *amicus curiae*, in the above captioned matter, hereby certify that copies of the Brief on Behalf of the Commonwealth of Virginia, *Amicus Curiae*, have been served upon each of the counsel of record for the parties herein by depositing the same in the United States Post Office, with first class or air mail postage prepaid, this 21st day of September, 1966, pursuant to the provisions of Rule 33 of the Rules of the Supreme Court of the United States as follows: Theodore S. Perry, Esq., Perry and Perry, 106 Church Avenue, Logan, Utah, 84321, counsel for petitioner, The First National Bank of Logan, Logan, Utah; C. E. Henderson, Esq., 800 Walker Bank Building, Salt Lake City, Utah, 84111, counsel for respondent, Walker Bank & Trust Company; John J. Wilson, Esq., and Charles J. Steele, Esq., 815 Fifteenth Street, N. W., Washington, D. C., 20005, counsel for petitioner, First Security Bank of Utah, N.A.; James F. Bell, Esq., and Brian C. Elmer, Esq., 1001 Connecticut Avenue, N. W., Washington. D. C., 20036, counsel for respondent, Commercial Security Bank; and Thurgood Marshall, Esq., Solicitor General of the United States, Department of Justice, Washington, D. C., 20530, counsel for petitioner, James J. Saxon, Comptroller of the Currency.

KENNETH C. PATTY
Assistant Attorney General